

**EXEMPTION OF
CLASSES OF DEBTS
FROM
MANDATORY TRANSFER
TO TREASURY**

Procedures and Standards

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**Department of the Treasury
Financial Management Service
Debt Management Services**

STANDARDS AND PROCEDURES FOR EXEMPTION OF CLASSES OF DEBTS FROM
THE REQUIREMENT OF TRANSFER TO TREASURY UNDER THE DEBT COLLECTION
IMPROVEMENT ACT OF 1996

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I - PURPOSES:

This document explains how Federal agencies may request that a class of delinquent debts be exempted from the requirement that the debts be transferred to the Department of the Treasury (Treasury) for collection action, as required under the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, codified at 31 U.S.C. 3711(g). Mandatory referral to Treasury for collection action under the DCIA is commonly referred to as “mandatory cross-servicing.”

This document also explains how Treasury will review and respond to requests for exemption from mandatory cross-servicing.

II - BACKGROUND:

1. *DCIA requirement to transfer delinquent debts.* The DCIA requires Federal agencies to transfer any non-tax debt which is over 180 days delinquent to the Department of the Treasury for debt collection action. The DCIA provides five specific statutory exemptions from this requirement. These specific exemptions apply to debts that:

- (a) are in litigation or foreclosure;
- (b) will be disposed of under an established asset sales program (within a specific timeframe);
- (c) have been referred to a private collection contractor for a period of time determined by the Secretary of the Treasury (the Secretary);
- (d) have been referred by, or with the consent of, the Secretary to a Treasury-designated debt collection center for a period of time determined by the Secretary; or
- (e) are being collected by internal offset.

2. *Authority of the Secretary of the Treasury to grant exemptions.* In addition to the five specific exemptions stated above, the DCIA granted to the Secretary the authority to grant exemptions to any other specific classes of debts. The statute authorizes the Secretary to grant exemptions at the request of the head of an agency, or upon the Secretary’s own initiative and determination.

3. *Treasury regulations regarding transfer of debts.* On April 28, 1999, the Financial Management Service (FMS) published in the Federal Register (64 FR 22906) a final rule concerning the transfer of debts to Treasury for collection. The final rule (which will be codified in the Code of Federal Regulations at 31 CFR 285.12) includes, among other items, more specific definitions of the five specific exemptions to the transfer of debts requirement contained in the DCIA. The final rule includes another governmentwide exemption from the requirement to transfer debts to Treasury - debts being serviced and/or collected in accordance with applicable statutes and/or regulations by third parties, such as private lenders or guaranty agencies.

The final rule also describes factors the Secretary will consider when deciding whether or not to grant exemptions to Federal agencies from the requirement to transfer debts to Treasury.

III - STANDARDS FOR ISSUANCE OF AN EXEMPTION BY THE SECRETARY OF THE TREASURY:

1. *General Rule.* Before issuing an exemption of a class of debts from the requirement that those debts be transferred to FMS for debt collection action, the Secretary of the Treasury will determine that granting such an exemption is in the best interests of the Government. This is the general rule adopted by FMS in the final rule at 31 CFR 285.12(d)(5).

In determining whether exemption is in the best interests of the Government, the Secretary will consider the three factors described in the final rule and below. The factors may be weighed at the discretion of the Secretary on a case-by-case basis, as appropriate to the specific request for exemption.

2. Specific Factors.

(a) Best means to protect the Government's financial interest - The Secretary will consider whether net recoveries received by the Government would be greater, or some other type of financial gain would accrue to the Government, if the debts at issue were not transferred to FMS for collection. Agencies asserting that this factor justifies an exemption should be able to document:

C Annual collection rates (dollar amount collected as compared to dollar amount of debts, and number of collections as compared to number of debts) on the class of debts for which the agency is seeking an exemption covering the last five years. The data covering the last five years should indicate a trend towards improved collections, or, if no trend towards improved collections is evident, the data should indicate consistent or stable collection rates. Annual collection rates should compare favorably with data available to Treasury through the Report on Receivables Due from the Public, and/or from other agencies collecting similar types of debts (Governmentwide collection rate for all non-tax debts for the period

of 1994-1998 is 39%).

- C Annual collection rates (dollar amount collected as compared to dollar amount of debts, and number of collections as compared to number of debts) on all agency delinquent debts covering the last five years. This data should be broken out to detail collection rates for both debts less than 180 days delinquent, and debts 180 days or more delinquent. The data covering the last five years should indicate a trend toward improved collections, or, if no trend toward improved collections is evident, the data should indicate consistent or stable collection rates.
- C Annual collection costs on all agency delinquent debts covering the last five years, if available. This data should be broken out to detail collection costs for debt less than 180 days delinquent, collection costs for debts 180 days or more delinquent, and collection costs for the class of debts for which the agency is seeking an exemption. The data covering the last five years should indicate a trend toward reduced collection costs, or, if no trend toward reduced collection costs is evident, the data should indicate consistent or stable collection costs.
- C A detailed explanation (including statutory and regulatory citations) of any special or unique debt collection tools available to the agency to collect the class of delinquent debts for which an exemption is requested.
- C Full implementation of all appropriate DCIA tools and authorities, including:
 - referral of eligible debts to Treasury for administrative offset;
 - referral of eligible debts to Treasury for cross-servicing;
 - reporting of delinquent debts to credit bureaus;
 - referral of debts to private collection agencies under a contract which maintains competition among private collection agencies;
 - use of administrative wage garnishment to collect delinquent debts; and
 - implementation of procedures to assure that delinquent debtors do not receive financial assistance in the form of Federal loans or loan guaranties.
- C Implementation of Executive Order 13019, "Supporting Families: Collecting Delinquent Child Support Obligations," by denying Federal financial assistance in the form of loans or loan guaranties or insurance to delinquent child support

obligors, to the extent permitted by law.

(b) Transfer of the class of debts to FMS would interfere with program goals - The Secretary will consider if the transfer of debts to FMS for mandatory cross-servicing would interfere with the goals of the program under which the debts arose. Agencies asserting that this factor justifies an exemption should be able to describe:

- C the specific goals to be achieved by the program;
- C the adverse impact transfer of debts to FMS would have on the agency meeting its program goals; and
- C the process the agency intends to use on the class of debts over 180 days delinquent to achieve program goals.

(c) Exemption is consistent with the purposes of the DCIA - The Secretary will consider whether the exemption of the class of debts is consistent with the purposes of the DCIA.

These purposes are:

- C To maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate tools;
- C To minimize the cost of collection by consolidating related functions and activities and utilizing interagency teams;
- C To reduce losses arising from debt management activities by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information within and among Federal agencies;
- C To ensure that the public is fully informed of the Federal Government's debt collection policies and that debtors are cognizant of their financial obligations to repay amounts owed to the Federal Government;
- C To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.
- C To encourage agencies, when appropriate, to sell delinquent debts, particularly debts with underlying collateral; and

- C To rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

IV - DOCUMENTATION TO SUPPORT A REQUEST FOR EXEMPTION:

1. *General rule.* The requesting agency should submit documentation which clearly supports the request for exemption. The documentation submitted should be directly related to the class of debts for which the exemption is requested. The requesting agency should include a narrative statement which clearly identifies the class of debts for which an exemption is requested and indicates which factors the agency believes justify an exemption. The narrative statement should include an explanation as to how the data submitted by the agency supports the exemption request. The requesting agency should include general data concerning the total number and dollar amounts of debts in the class which are delinquent, and the total number and dollar amount of debts in the class which are more than 180 days delinquent. To assure appropriate analysis of the agency's request, the requesting agency should include citations to the relevant statutes and regulations governing the class of debts, especially those related to special debt collection tools or program purposes, where applicable.

2. *Best financial interest of the Government.* Where the agency is asserting that an exemption is in the best financial interest of the Government, the agency should submit a detailed explanation of its debt collection processes, indicating the specific steps the agency takes in collecting delinquent debts. The agency should submit a flowchart of its debt collection processes, if available. The explanation and flowchart should completely document the agency's debt collection practices with respect to debts which are 180 days or more past due. The agency should also submit historical data number and dollar amount of debts, debts less than 180 days delinquent, debts 180 days or more delinquent and collections concerning the specific class of debts for which the exemption is being requested. Collections should be further itemized based on specific debt collection tools utilized. Data on collection costs should also be submitted, if available. Finally, the agency should describe its efforts to fully implement and utilize the authorities contained in the DCIA, and its implementation of any responsibility it has under Executive Order 13019.

3. *Interference with program goals.* Where the agency is asserting that the transfer of a class of debts would interfere with program goals, the agency should also include an explanation of how the transfer of debts would interfere with program goals, a description of the adverse impact transfer would have on meeting program goals and the process the agency uses and/or would use to achieve program goals, and a description as to why the interference cannot otherwise be mitigated.

4. *Request for additional information.* After an initial analysis of an agency's request for exemption, Treasury officials may request additional information and/or data from the agency in order to properly analyze the exemption request.

V - REQUESTS FOR EXEMPTION:

1. *Informal discussions.* If an agency believes an exemption for a specific class of debts may be warranted, agency officials should contact FMS, Debt Management Services (DMS), to discuss informally the need for an exemption and other options which may be available to meet the agency's concerns. The contact point at DMS for these informal discussions is:

Director, Business and Agency Liaison Division
Debt Management Services
Financial Management Service
401 14th Street, SW
Washington, DC 20227
Telephone: (202) 874-6660

2. *Request for exemption.* If, after informal discussions with DMS, an agency determines that a formal request for exemption is appropriate, the request must be made in writing to the Secretary by the head of the agency or, if appropriately delegated, by the Chief Financial Officer or the Deputy Chief Financial Officer.

The request should:

- C define the class of debts for which the exemption is requested, including specifying the percentage the class of debts represents of the agency's total portfolio of delinquent debts (in both number of debts and dollar amount);
- C include the narrative statement indicating which factors the agency believes justify an exemption, as well as the explanation as to how the data submitted supports the agency's exemption request (as previously described above in "Documentation to Support a Request for Exemption," Paragraph 1); and
- C provide supporting documentation pertaining to each relevant factor to justify the exemption requested (as previously described above in "Documentation to Support a Request for Exemption," Paragraphs 2, 3 and 4).

The request should be addressed to the Secretary of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220. A copy of the request should also be sent to the Assistant Commissioner of Debt Management Services, Financial Management Service, 401 14th St., SW, Room 446,

Washington, DC, 20227.

3. *Secretary's response.* In responding to any request for exemption, the Secretary may take any action which he determines to be in the best interests of the Government. Such action may include granting the exemption(s) in whole or in part, denying the exemption(s) in whole or in part, or taking alternative actions, as appropriate. Requests will be reviewed and evaluated against these standards as soon as possible and normally within 120 days of complete submission and the agency notified of the decision.